

AMENDED IN SENATE JUNE 24, 2002

AMENDED IN SENATE JUNE 13, 2002

AMENDED IN ASSEMBLY MAY 15, 2002

AMENDED IN ASSEMBLY APRIL 29, 2002

CALIFORNIA LEGISLATURE—2001–02 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1830**

**Introduced by Assembly Members Frommer and Thomson**

January 22, 2002

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An act to add Section 22963 to the Business and Professions Code, relating to tobacco products.

LEGISLATIVE COUNSEL'S DIGEST

AB 1830, as amended, Frommer. Tobacco products: sales to minors.

Existing law creates the Stop Tobacco Access to Kids Enforcement (STAKE) Act. The STAKE Act is designed to reduce the availability of tobacco products to minors through specified sales restrictions and enforcement activities. Existing law authorizes the State Department of Health Services to assess civil penalties against any person, firm, or corporation that furnishes a tobacco product to a minor.

This bill would prohibit any person from distributing or selling tobacco products via the United States Postal Service, or any other public or private postal or package delivery service, to any purchaser who is a minor. This bill would require a specified distributor or seller, among other things, to verify that a purchaser of tobacco products is 18

years of age or older, and to telephone the purchaser after 5 p.m. to confirm the order prior to shipping the tobacco products.

This bill would authorize a city attorney, district attorney, or the Attorney General to assess specified civil penalties against a person, firm, corporation, or other entity that violates any of these provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 22963 is added to the Business and  
2 Professions Code, to read:

3 22963. (a) The distribution or sale of tobacco products  
4 directly or indirectly to any person under the age of 18 years  
5 through the United States Postal Service or through any other  
6 public or private postal or package delivery service at locations,  
7 including, but not limited to, public mailboxes and mailbox stores,  
8 is prohibited.

9 (b) Any person selling or distributing tobacco products directly  
10 to a consumer in the state through the United States Postal Service  
11 or by any other public or private postal or package delivery  
12 service, including orders placed by mail, telephone, facsimile  
13 transmission, or the Internet, shall comply with the following  
14 provisions:

15 (1) (A) Before enrolling a person as a customer or distributing  
16 or selling the tobacco product through any of these means, the  
17 distributor or seller shall verify that the purchaser is 18 years of age  
18 or older. The distributor or seller shall attempt to match the name,  
19 address, and date of birth provided by the customer to information  
20 contained in records in a database of individuals whose age has  
21 been verified to be 18 years or older. ~~An appropriate database may~~  
22 ~~include information based on older by reference to an appropriate~~  
23 ~~database of government records kept by the distributor, a direct~~  
24 ~~marketing firm, or any other entity. The distributor or seller shall~~  
25 ~~also verify that the billing address on the check or credit card~~  
26 ~~provided by the consumer matches the address listed in the~~  
27 ~~database.~~

28 (B) If the distributor or seller is unable to verify that the  
29 purchaser is 18 years of age or older pursuant to subparagraph (A),  
30 he or she shall require the customer to submit an age-verification

1 kit consisting of an attestation signed by the customer that he or she  
2 is 18 years of age or older and a copy of a valid form of government  
3 identification. For the purposes of this section, a valid form of  
4 government identification includes a driver's license, state  
5 identification card, passport, an official naturalization or  
6 immigration document, such as an alien registration receipt card  
7 (commonly known as a "green card") or an immigrant visa, or  
8 military identification. The distributor or seller shall also verify  
9 that the billing address on the check or credit card provided by the  
10 consumer matches the address listed in the form of government  
11 identification.

12 (2) The distributor or seller shall impose a two-carton  
13 minimum on each order of cigarettes, and shall require payment  
14 for the purchase of any tobacco product to be made by personal  
15 check of the purchaser or the purchaser's credit card. No money  
16 order or cash payment shall be received or permitted. The  
17 distributor or seller shall arrange as part of the merchant  
18 identification information that is provided in the purchaser's credit  
19 card statement for the words "tobacco product" to be printed in  
20 the credit card statement when a purchase of a tobacco product is  
21 made by credit card payment.

22 (3) The distributor or seller shall make a telephone call after 5  
23 p.m. to the purchaser confirming the order prior to shipping the  
24 tobacco products. The telephone call may be a person-to-person  
25 call or a recorded message. The distributor or seller is not required  
26 to speak directly with a person and may leave a message on an  
27 answering machine or by voice mail.

28 (4) The distributor or seller shall deliver the tobacco product to  
29 the address of the purchaser shown on the check or the billing  
30 address for the credit card used for payment. The distributor or  
31 seller shall deliver the tobacco product by a postal or package  
32 delivery service method that limits delivery to the purchaser in  
33 order to deliver the package. No delivery described under this  
34 section shall be permitted to any post office box.

35 (5) The distributor or seller shall affix a stamp, sticker, or other  
36 form of labeling on the exterior of the package with the words  
37 "Tobacco Product-Intended for Adults Only" clearly stamped or  
38 labeled on the outside of the package.

39 (c) Notwithstanding subdivisions (a) and (b), if a distributor or  
40 seller complies with all of the requirements of this section and a



1 minor obtains a tobacco product by any of the means described in  
2 subdivision (b), the seller or distributor is not in violation of this  
3 section.

4 (d) For the purposes of the enforcement of this section pursuant  
5 to Section 22958, the acts of the United States Postal Service or  
6 other common carrier when engaged in the business of  
7 transporting and delivering packages for others, and the acts of a  
8 person, whether compensated or not, who transports or delivers a  
9 package for another person without any reason to know of the  
10 package's contents, are not unlawful and are not subject to civil  
11 penalties.

12 (e) (1) For the purposes of this section, a "distributor" is any  
13 person or entity, within or outside the state, who agrees to  
14 distribute tobacco products to a customer within the state. The  
15 United States Postal Service or any other public or private postal  
16 or package delivery service are not distributors within the meaning  
17 of this section.

18 (2) For the purpose of this section, a "seller" is any person or  
19 entity, within or outside the state, who agrees to sell tobacco  
20 products to a customer within the state. The United States Postal  
21 Service or any other public or private postal or package delivery  
22 service are not sellers within the meaning of this section.

23 (3) For the purpose of this section, a "carton" is a package or  
24 container that contains 200 cigarettes.

25 (f) A district attorney, city attorney, or the Attorney General  
26 may assess civil penalties against any person, firm, corporation, or  
27 other entity that violates this section, according to the following  
28 schedule:

29 (1) A civil penalty of not less than one thousand dollars  
30 (\$1,000) and not more than two thousand dollars (\$2,000) for the  
31 first violation.

32 (2) A civil penalty of not less than two thousand five hundred  
33 dollars (\$2,500) and not more than three thousand five hundred  
34 dollars (\$3,500) for the second violation.

35 (3) A civil penalty of not less than four thousand dollars  
36 (\$4,000) and not more than five thousand dollars (\$5,000) for the  
37 third violation within a five-year period.

38 (4) A civil penalty of not less than five thousand five hundred  
39 dollars (\$5,500) and not more than six thousand five hundred  
40 dollars (\$6,500) for the fourth violation within a five-year period.



1     (5) A civil penalty of ten thousand dollars (\$10,000) for a fifth  
2     or subsequent violation within a five-year period.

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